

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MARRIOTT HOTEL SERVICES, INC. :
 :
 Plaintiff, :
 :
 v. : Case No. 483406-V
 :
 WARDMAN HOTEL OWNER, L.L.C. :
 :
 and :
 :
 PACIFIC LIFE INSURANCE COMPANY :
 :
 Defendants. :

Attorneys and Law Firms:

John M. Quinn, Esq., Ethridge, Quinn, Kemp, Rowan & Hartinger, Rockville, MD, counsel for the plaintiff.

Jessica Ring Amunson, Esq., Lindsay C. Harrison, Esq., Kali Bracey, Esq., Jenner & Block, LLP, Washington, D.C., counsel for the plaintiff.

J. Stephen McAuliffe III, Esq., Rosalyn Tang, Esq., Miles & Stockbridge, Rockville, MD, counsel for defendant Wardman Hotel Owner, L.L.C.

Todd E. Soloway, Esq., Bryan T. Mohler, Esq., Pryor Cashman, LLP, New York, NY, counsel for defendant Wardman Hotel Owner, L.L.C.

Brian D. Frey, Esq., Grant Stein, Esq., David Wender, Esq., Alston & Bird LLP, Atlanta, GA, counsel for defendant Pacific Life Insurance Company.

Memorandum and Order

On December 3, 2020, after two days of testimony and argument, the court issued a written order that preliminarily enjoined defendant Wardman Hotel Owner, LLC (“Owner”) from continuing to breach its contractual duty, under Section 4.05 of the Operating Agreement, to fund working capital calls necessary for the operation of the Owner’s hotel by the plaintiff, Marriott Hotel Services, Inc. (“Marriott”). The court’s preliminary injunction order was sent to

the parties by electronic mail on December 3, 2020, although it was not docketed by the Clerk until December 8, 2020.¹

On December 9, 2020, Owner asked this court to issue a stay pending appeal, and gave the court until 3:30 p.m. on December 10, 2020, to rule on its motion. When this court did not rule by the appointed time, Owner asked the Court of Special Appeals for a stay. By Order entered on December 14, 2020, the Court of Special Appeals denied Owner's motion for a stay, without prejudice to Owner's "opportunity to seek relief in the circuit court, if appropriate, in connection with any capital calls Marriott might make after the date of the injunction."

On December 16, 2020, Owner filed a supplement to its motion for a stay pending appeal. On December 21, 2020, Marriott responded with a written opposition. The court has considered each side's arguments. No hearing is necessary.

The factors governing the issuance of a stay of a trial court order pending an appeal generally are: (1) whether the applicant has made a strong showing that it is likely to prevail on the merits of its appeal; (2) whether the applicant will be injured irreparably absent a stay; (3) whether the issuance of a stay will cause substantial injury to the other party; and (4) whether the public interest will be served by granting the stay. *See Nken v. Holder*, 556 U.S. 418, 427 (2009); *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970); *Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

The court is unpersuaded that Owner has satisfied any of the above-cited factors. First, the court has carefully reviewed all of Owner's arguments on the merits. Respectfully, they are unpersuasive. Owner contractually agreed to fund working capital calls. The court's preliminary injunction simply requires Owner to fulfill its express promise. Other than that the

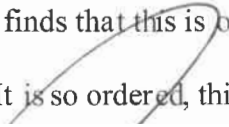
¹ The preliminary injunction was binding on the Owner as of the time it received actual notice, regardless of when it was docketed by the clerk. Md. Rule 15-502(d); *see* P. Niemeyer & L. Schuett, MARYLAND RULES COMMENTARY at 1019 (5th Ed. 2019).

Owner would prefer simply to breach the contract and litigate, no cogent reason has been advanced as to why a sophisticated party should not be held to its bargain. The record is clear that Owner can finance its obligations when it chooses to do so. In this case, the court finds, it simply prefers not to do so.

Second and third, the court is persuaded that Marriott, not Owner, would suffer irreparable harm, if a stay were granted. Owner's refusal to fund working capital calls has forced Marriott to issue WARN notices to hotel employees and to pay more than \$5.5 million in hotel operating expenses out-of-pocket. Guests query Marriott, not Owner, about deposits and contracts for future events. Vendors are going unpaid, causing them unnecessary hardship. As the court found when it issued the preliminary injunction, Marriott is suffering substantial reputational harm, among employees, customers, and vendors, because of Owner's contractual breach. This will only worsen if a stay is granted, as Owner requests. There is no question in the court's mind that an award of money damages in this case, which the preliminary injunction is not, would be manifestly under-compensatory given the reputational harm the court finds to exist.

Fourth, federal courts in Maryland have concluded, under a variety of circumstances, that the public interest lies in enforcing express promises. *E.g., Ledo Pizza Sys., Inc. v. Singh*, 983 F. Supp. 2d 632, 643 (D. Md. 2013). This court agrees and finds that this is one such circumstance.

The request for a stay pending appeal is denied. It is so ordered, this 22nd day of December, 2020.



Ronald B. Rubin, Judge